

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____)
Petition of Bay State Gas Company)
For Approval of Revised Tariffs)
And Other Rate Modifications)
_____)

D.T.E. 05-27

**MOTION OF BAY STATE GAS COMPANY
FOR A PROTECTIVE ORDER**

I. INTRODUCTION

Bay State Gas Company ("Bay State") requests that the Department of Telecommunication and Energy ("Department") grant protection from public disclosure, pursuant to G.L. c. 25, §25D, for certain workpapers of Bay State's witness in this proceeding, James L. Harrison, that have been filed today as part of Bay State's direct testimony and provide confidential information concerning Bay State's gas supply contracts.

In support of its request for a protective order, Bay State states as follows:

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, §25D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has frequently protected sensitive market information, and has determined that competitively sensitive information, such as price terms, can be protected. Standard of Review for Electric Contracts, D.P.U. 96-39, at 2 (1996). The Department has

determined that price terms should be protected in gas supply contracts, including “reservation fees or charges, demand charges, commodity charges and other pricing information”. Colonial Gas Company, D.P.U. 96-18, at 4 (1996).

The Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable:

The Department recognizes that the replacement gas purchases ... are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 20 (1994).

III. THE MATERIALS ARE PROPRIETARY AND CONFIDENTIAL AND WARRANT PROTECTION FROM DISCLOSURE

The direct testimony of James L. Harrison, filed today as part of Bay State's petition for an increase in base rates, addresses the subjects of marginal costs, the allocated cost of service study, and the allocation of gas costs. Certain of Mr. Harrison's workpapers contained in Workpapers Vol. 3 - Harrison, specifically those submitted in support of Exh. BSG/JLH-1 at pp. 36 through 41 and 46 through 47, contain confidential information on the commodity suppliers, maximum daily quantity (“MDQ”), prices, revenues and related terms of Bay State's gas supply contracts. These terms of Bay State's gas supply contracts are competitively sensitive and not disclosed to the public or entities outside of the Department in Bay State's cost of gas proceedings. If publicly disclosed, this information would harm Bay State's ability to negotiate similar contracts in the future. This is the type of competitively sensitive information that the

Department has protected in the past. Berkshire Gas Company, D.T.E. 99-81 (1999) (cost and pricing information redacted); Standard of Review for Electric Companies, D.P.U. 96-39 (1996) (electricity contract prices protected). There would be no harm to the public, and clear benefits to Bay State's customers, if the workpapers are protected.

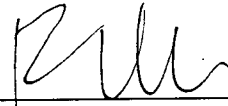
IV. CONCLUSION

For the reasons set forth above, Bay State requests that the Department protect from public disclosure the workpapers of James L. Harrison that contain pricing information for Bay State's gas supply contracts.

Respectfully submitted,

BAY STATE GAS COMPANY

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Dated: April 27, 2005

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FOR A PROTECTIVE ORDER**

I. INTRODUCTION

Bay State Gas Company ("Bay State") requests that the Department of Telecommunication and Energy ("Department") grant protection from public disclosure, pursuant to G.L. c. 25, §25D, for the consolidated federal income tax returns of Bay State, that have been filed today as part of the required supplemental filing information accompanying Bay State's direct testimony in this proceeding.

In support of its request for a protective order, Bay State states as follows:

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, §25D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

III. THE MATERIALS ARE PROPRIETARY AND CONFIDENTIAL AND WARRANT PROTECTION FROM DISCLOSURE

Bay State files federal tax returns and Bay State has included these returns as part of its

supplemental filing in this case. The Internal Revenue Code provides for the confidentiality of federal tax returns, and, therefore, there is no general right of access by the public to a taxpayer's return. The Department has protected the tax returns of companies under its jurisdiction from public disclosure in past cases. As a result, the Department should protect the tax returns filed today by Bay State in this proceeding.

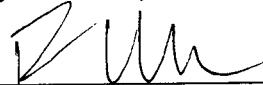
IV. CONCLUSION

For the reasons set forth above, Bay State requests that the Department protect from public disclosure the federal income tax returns filed today with the Department.

Respectfully submitted,

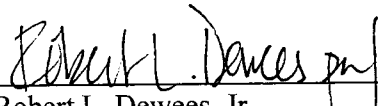
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